



Creating A Balance Between Enforcement and Education

*State's low flows
harm water users,
fish*

... For Water Rights

In some areas of Washington unauthorized water use has limited the use of water by persons who have a water right. Unauthorized uses also affect senior water right holders and present problems for resources that depend on instream flows. Stream habitat has been degraded by reduced instream flow, as well as by storm runoff from logged areas, agriculture, and urban development. Low summer flows in both the main stems and tributaries of some streams can counter efforts to maintain or improve fish-rearing habitat.

The Department of Ecology, through its Water Resources Program, issues water rights and administers state water resource laws. In administering these laws, Ecology promotes the beneficial use of the state's water resources, and strives to protect public health and preserve the natural resources and aesthetic values of Washington's water.

*Ecology responds
to problem with
enforcement
projects, education*

Each of Ecology's regional offices are conducting extensive educational activities to encourage voluntary compliance with state water resources laws and provisions that are specified in individual water rights. Direct mailings, public meetings and individual guidance have been instrumental means of providing water users with this important information.

Due to additional funding recently granted by the Washington State Legislature, proactive enforcement and education projects are underway in several river basins, including: the Cedar River, Nooksack Basin, Salmon Creek, Snake River, and the Methow.

*Facts every water
user should
understand*

A water right **permit** or **certificate** is a legal authorization to use a specified amount of water, subject to provisions, for specific beneficial purposes. Some of these purposes include domestic use, irrigation, commercial or industrial uses, fish or wildlife projects, and hydropower.

A water right is required for all uses of surface water (lakes, ponds, rivers, streams or springs). A water right is also required for ground water withdrawals of more than 5,000 gallons per day or for irrigation of more than one-half acre of non-commercial lawn or garden.

A water right **claim** is not a water right. A water right claim is a statement by the property owner regarding a water use not authorized by a permit or certificate. A claim may represent a valid water right if it describes a surface water use that began before 1917 or a ground water use that began before 1945, and if the water has been used continuously without a break of five or more years.

Important topics to note are:

- **Water right permits and certificates.** Persons withdrawing water authorized by permit or certificate will be informed of the specific uses, amounts, and any restrictions that pertain to their individual water right.
- **Provisioned water rights.** Persons having water rights which limit water use to a set amount, a set time, or have low flow provisions, will be informed of those restrictions and asked to voluntarily comply. Additional action will be taken if voluntary compliance fails.

- **Non-use of a water right.** Persons using less than the total amount authorized in their water right, or not using any of the water allocated by a water right, will be asked to voluntarily relinquish part or all of the water right back to the state.
- **Claims to use of surface water prior to 1917.** Persons withdrawing water without a water right permit or certificate, but who have claim registrations, will be asked to support the water right claim with sufficient evidence to show that a valid right exists to withdraw or divert water. Riparian claims may also exist.
- **Unauthorized surface and ground water uses.** Persons withdrawing water without a water right or a supported water right claim will be asked to voluntarily cease withdrawals. This will be handled on a case-by-case basis. No determinations of unauthorized use will be made until all available information has been submitted and analyzed. Additional action will be taken if voluntary compliance fails.

By law, Ecology must ensure compliance with water right regulations to protect senior water rights and instream flows. Ecology is actively seeking public support and cooperation in this effort. Formal enforcement actions will be taken when voluntary compliance efforts fail. Most enforcement actions are appealable.

... For Well Drilling and Water Rights

Ecology is now using field citations to provide warnings and assess penalties for violation of water resources laws. Field citations provide Ecology with a resource-effective enforcement tool which gives on-the-spot responses to those who violate water resource laws. The use of field citations increases Ecology's contacts with water users, allowing the agency to provide technical advice and guidance when minor violations occur - a process that can help prevent some major violations.

Compliance with water resource laws is essential to Ecology's efforts to protect and manage Washington's water resource. Through use of this new enforcement tool Ecology anticipates an increase in compliance rates and a dramatic decrease in the average time necessary to complete enforcement cases. Here are answers to commonly asked questions about this new program.

Q: *What are field citations?*

A: Field citations are similar to traffic tickets. The citation usually addresses a clear-cut violation. They may be issued as a warning or may carry a small penalty. Field citations provide for an appeal process.

Q: *What type of water resource violations will field citations be used for?*

A Field citations will be used by authorized staff for enforcement of both water rights and well drilling regulations. They can be used to warn violators and to assess penalties and will only be used for specific violations, like:

- Failure to obey a previously issued order.
- Drilling a well without a well drilling license.
- Failure to submit a start card before drilling a well.
- Failure to follow minimum standards for well construction.
- Unauthorized use of water.

***Ecology initiates
new pilot program to
provide education,
technical assistance
to violators of water
resource rules***

In protecting Washington's water resources, Ecology will take formal enforcement action against water users and well drillers who fail to obey water resource rules

Q: *How does Ecology's enforcement program work?*

A: Ecology encourages compliance of water resource laws through informal or formal enforcement actions:

- Informal enforcement action is taken to educate the public and encourage voluntary compliance. An example of an informal enforcement action is a warning citation which outlines the steps a person must take to comply with water laws and states the consequences of continued unauthorized water use.
- Formal enforcement action is taken when voluntary compliance does not work or for more serious or repetitive violations. Ecology's Water Resources Program can issue regulatory orders, assess civil penalties, and suspend or revoke a well driller's license for well construction or licensing violations. A well driller's license may be suspended for up to six months. Well drillers with revoked licenses must wait one year to apply for a new license.

The maximum civil penalty for violation of a water resource rule, regulation, permit or order is \$100 per day for each separate violation. Unauthorized use of water that is willful and deliberate is a misdemeanor and is punishable by 30 days in jail and a maximum fine of \$250.

Q: *What is a regulatory order?*

A: A regulatory order directs violators to take certain actions within a specified time. For example, an order may direct the individual to immediately cease improper drilling activity or to immediately cease and desist unauthorized water use. Failure to comply with a regulatory order may result in civil penalties or other actions. A field citation may be issued in conjunction with a regulatory order.

Q: *Can Ecology's enforcement actions be appealed?*

A: Yes. Administrative orders and penalty notices issued by Ecology can be appealed to the Washington Pollution Control Hearing Board. Information concerning the appeal process is found in the order or citation document.

Find out more **Q:** *How do I get more information?*

A: For more information about water resources enforcement projects in Washington and the use of field citations and how they may affect you, please contact the Department of Ecology regional office nearest you. Detailed information materials on water resources enforcement are available upon request.

Linda Pilkey-Jarvis		(206) 459-6802
Enforcement Coordinator	WA Department of Ecology	
or	Water Resources Program	or
Richard Szymarek	P.O. Box 47600	
Well Drilling Coordinator	Olympia, WA 98504-7600	(206) 459-6122

Regional Offices

Central Region	3601 W. Washington Yakima, WA 98903-1164	(509) 575-2800
Eastern Region	North 4601 Monroe, Suite 100 Spokane, WA 99205-1295	(509) 456-2734
Northwest Region	3190 - 160th Avenue SE Bellevue, WA 98008-5452	(206) 649-7000
Southwest Region	321 Cleveland Avenue Tumwater, WA Mail: PO Box 47775 Olympia, WA 98504-7775	(206) 586-6380